

# EXHIBIT 37

**Verduyn, Steve**

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**From:** Malicki, Mike  
**Sent:** Tuesday, August 12, 2003 9:50 AM  
**To:** Contois, Al; Verduyn, Steve  
**Cc:** Hall, Dave  
**Subject:** RE: Lee Custom Cycle

*Agree!*

*Thank-You and God Bless America*

*M. G. Malicki  
 Director of Field Operations*

-----Original Message-----

**From:** Contois, Al  
**Sent:** Monday, August 11, 2003 3:43 PM  
**To:** Verduyn, Steve  
**Cc:** Malicki, Mike; Hall, Dave  
**Subject:** RE: Lee Custom Cycle

Steve,

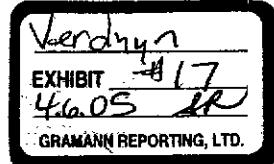
My suggestion would be to send a Dear Dealer Letter to both dealers requesting the paperwork for these 3 deals to verify that they completed the paperwork properly. Assuming that they did, at the very least, they will both know that we do check these out when we find them and from here on out selling a vehicle to these non-retailers in the future could reduce there allocation.

Thanks,

Al

-----Original Message-----

**From:** Verduyn, Steve  
**Sent:** Monday, August 11, 2003 1:58 PM  
**To:** Contois, Al  
**Cc:** Malicki, Mike; Hall, Dave  
**Subject:** RE: Lee Custom Cycle



With a little digging, I found all three.

FXSTI sold 07/24/03 to Robert Issa Nottingham, NH by 1864 Everett, MA  
 (1HD1BVB143Y106103)

FXSTBI sold 01/27/03 to Raymond J. Smith Jr. of South Hadley, MA by 3630 Akron, OH  
 (1HD1JAB123Y041795)

FLSTF sold 07/25/03 to Jeffrey Christiansen of Lee, NH by 1864 Everett, MA  
 (1HD1BMY453Y052113)

If memory serves, Lee Cycle is owned in part or fully by Ray Smith. We have had problems with that individual before. He tends to go from dealer to dealer and buy one/two bikes. Not necessarily much to raise dealer suspicion, but he ends up with a lot of bikes.

11/12/2004

H-D 1855  
 Confidential

I cross checked the Boston sales for multiple purchases and found nothing. It is possible that these are "ghost" deals.

Advise how you want to proceed.....

Steve

-----Original Message-----

**From:** Contois, Al  
**Sent:** Monday, August 11, 2003 11:30 AM  
**To:** Verduyn, Steve  
**Subject:** FW: Lee Custom Cycle

Steve,

Here you go. Thanks!!!!!!

-----Original Message-----

**From:** Ed Moulton [mailto:EMoulton@SeacoastHarley.com]  
**Sent:** Saturday, August 09, 2003 11:17 AM  
**To:** Contois, Al  
**Subject:** Lee Custom Cycle

Al -

Below are three bikes that my friend picked up on in the showroom of Lee Custom Cycle,  
as I said they had electrical tape covering VIN but salesman had to go answer phone  
and he pulled tape back to get numbers...

FXSTI	BLK	106103
FXSTBI	GUN	041795
FLSTF	BLK/SLV	052113

Thanks.... Ed

8/9/03 Channel 9 is running ads today for Lee Custom Cycle "We have NEW 03  
Harley-Davidson's in stock"....

Time for you to do your thing...

---

Thanks again....Ed

H-D 1856  
Confidential

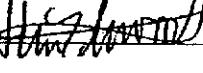
# EXHIBIT 38

District Number:	01	2000 Bar and Shield Scoresheet				Dealer Number:	1864
		Fax Response to: Shelly Tighe or Michelle Oppermann 414 343-8906				Last Updated:	9/12/00
Score	Max	A. Operations	Score	Max	C. Customer Service		
80	80	1 Submitted Qtrly Financial Statements Electronically:	4	70	1 Hrs of Operation-Retail	3335	
				70	2 Hrs of Operation-Service	2885	
20	20	2 5 Yr. Business Plan:	7/31/00	30	3 H-D Direct Mail Motor P&A:	Y	
50	50	3 Dealer Documents Complete & Verified:	Y	30	General Merchandise	Y	
				15	General Merchandise Additional:	Y	
20	20	4 Maintained Computer Inventory Management:	Y	20	4 H-D Demo Program:	Y	
				20	5 Maintain Active Hog Chapter	Y	
40	40	5 Submitted Electronic 100% Warr Claims:	Y	20	6 Co-op Advertising: Rolling 6 Month Co-op Advertising: MDF	100	
40	40	6 Submitted Electronic 90% SWR Forms	Y				
10	10	7 Electronic Inv Rptng & Retail Polling:	Y	70	7 Radio Events	7	
40	40	8 Place 90% P&A (RG,TA,NDA,SO,SE,DV)	Y		TV Events		
20	20	9 Participated in Sample Program:	Y		Direct Mail - Non H-D Catalog Pgm		
320	320	Operations Totals			Billboard (Except from timebound req.)		
				20	8 Open House H-D National	Y	
Score	Max	B. People		20	Held Annual Open House Date:	4/17/00	
		1 Meet Guidelines for Staffing Levels:		20	9 Web Site Linked From H-D Site	Y	
30	30	Vehicle Sales	Y	40	10 In Dealer Financing/Ext Warranty/Ins	Y	
30	30	P&A General Merchandise	Y	20	11 Service Follow-up Program	Y	
30	30	Service	Y	465	Customer Service Totals		
30	30	Management/Admin./Office	Y				
40	40	2 Technicians Enroll In Tech Rec Program	Y	Score	D. Facility		
40	40	3 P&A staff current on all PACE Tapes:	Y	40	1 Location: Acceptable:	1/1/98	
40	40	4 Parts or Service Management Training:	4	20	2 Current 3x24 or approved Signage	Y	
10	10	5 Attendee at HD Credit F&I Seminar:	Y	20	Signage: Current Bar & Shield:	Y	
10	10	6 Shop Talk Parts and Service Training	Y	30	3 Appearance/Cleanliness:	Y	
20	20	7 Provided Current Job Descriptions:	Y	20	4 Approved Retail Environment	2/1/98	
20	20	8 Provided Written Employee Handbook:	Y	40	5 Total Facility Size:	100	
20	20	9 Provided Written Compensation Plan:	Y	40	6 Showroom Size:	100	
20	20	10 Attended 2001 MY Announcement Mtg.		40	7 Service Dept:	100	
		Employee Name:		20	8 Customer Parking:	Y	
		John Atwood		270	Facilities Totals		
20	20	11 Attended 2000 MY DOT					
		Employee Name:					
		John Atwood		Score	E. Performance		
20	20	12 Attend Dealer Operations Training		30	1 Accepted 2000 MY SUA: Big Twin	Y	
		Employee Name:		10	Accepted 2000 MY SUA: Sportster	Y	
		R. Cappucci		50	2 Retailed 2000 MY SUA:	99	
20	20	13 Attended 2000 Winter Meeting Expo:		25	3 Inc. Net Wholesale P&A/Gen Merch:		
		Employee Name:		30	4 2000 MY Net Wholesale Motor Parts:	91	
		Debbie Leone		30	5 2000 MY Net Wholesale Gen Merch:	91	
10	10	14 Attended 2000 Spring Town Hall Mtg:		150	Performance Totals		
		Employee Name:					
		JOHN ATWOOD		Score	F. CSI		
				130	1 One Month Sales Summary:	130	
				46	2 18 Month Service Summary:	46	
410	410	People Totals		176	CSI Total		

For further detailed information, please refer to the 2000 Model Year Bar & Shield Evaluation Worksheets Rationale & Criteria Book

### Bar & Shield Totals

Net Max (Sections A-E)	1,660	Gross Max (Sections A-F)	2,060
Net Score (Sections A-E)	1,615	Gross Score (Sections A-F)	1,791

Dealer Signature:  Date: 9/29/00

DM Signature:  Date: 9/29/00

District Number:	01	2001 Bar and Shield Scoresheet				Dollar Number:	1864
		Last Viewed or Printed 9/13/2001				Last Updated:	9/4/2001
Score	Max	A. Operations	Score	Max	C. Customer Service		
30	40	1 Electronic Qtrly Financial Statements	3	60	1 Retail Hours		3120
40	40	2 CPA Prepared Annual F.S.	Y	20	2 Service Hours		2624
20	20	3 5 Yr. Business Plan	7/26/2001	30	3 H-D Direct Mail: Motor P&A General Merchandise		Y
20	20	4 Computer Inventory & Order Mgmt		30	4 H-D Demo Program:		Y
40	40	5 Electronic Warranty Claim, SWR, P&A Orders		20	5 Hog Chapter		Y
20	20	6 Inventory Reporting & Retail Polling		10	6 Use Co-op or MDF Advertising		Y
40	40	7 Access to h-dact.com by 03/31/2001		120	7 Radio Events		12
20	20	8 Participated in Sample Program			TV Events		
10	10	9 Customer Contact System			Radio Events, TV		
40	40	10 Approved Fork Lift Equipment			Newspaper		
280	290	Operations Totals			Direct Mail - Non H-D Catalog Fgm		
Score	Max	B. People	20	20	Billboard (Exempt timebound req.)		
30	30	1 Meet Guidelines for Staffing Levels:	40	40	8 H-D National Open House		Y
30	30	Vehicle Sales	40	40	Dealer Open House Date:		6/2/2001
30	30	P&A and General Merchandise	40	40	9 Web Site Link by 03/31/2001		Y
30	30	Service	40	40	10 Provide Financing/Ext Warranty/Ins		Y
30	30	Management/Admin./Office	430	470	Customer Service Totals		
40	40	2 Service Staff PHD Trained	Y		D. Facility		
40	40	3 P&A / Gen Mdsic Staff PACE Trained	40	40	1 Location: Acceptable:		3/1/1998
20	20	4 Management MBA Trained	40	40	2 Current 3x14 or approved Signage:		Y
20	20	5 Attended H-D Credit F&I Seminar	40	40	Signage: Current Bar & Shield:		Y
40	40	6 Job Descriptions/ Handbook/Comp. Plan	40	40	3 Approved Retail Environment		3/1/1998
20	20	7 Principal or G.M. Attended 2002 MY Summer Dealer Meeting	40	40	4 Total Facility Size:		100
		Principal or G.M. Name:	40	40	5 Showroom Size:		100
		John Atwood	40	40	6 Service Dept:		100
20	20	8 Principal or G.M. Attended 2001 Winter Dealer Meeting Training	20	20	7 Customer Parking:		Y
		Principal or G.M. Name:			Facilities Totals		
		John Atwood			E. Performance		
20	20	9 Employee Attended 2001 WDM Expo	30	30	1 Accepted 2001 MY SUA: Big Twin		Y
		Employee Name:	30	30	Accepted 2001 MY SUA: Sportster		Y
		Ronda Young	50	50	2 Retailed 2001 MY SUA:		100
20	20	10 Principal or G.M. Attended 2001 Spring Town Hall Meeting	25	25	3 Inc. Net Wholesale P&A/Gen Merch:		21
		Principal or G.M. Name:	40	40	4 % Net Wholesale Motor Parts:		103
		John Atwood	30	30	5 % Net Wholesale Gen Merch:		107
360	360	People Totals	205	205	Performance Totals		
Score	Max	F. CSI					
57	200	1 One Month Sales Summary:					57
45	200	2 18 Month Service Summary:					45
102	400	CSI Total					

Bar & Shield Totals							
Net Max (Sections A-E)	1,625		Gross Max (Sections A-F)	2,025			
Net Score (Sections A-E)	1,575		Gross Score (Sections A-F)	1,677			
Dealer Signature:			Date:	9/20/01	DM Signature:		
							Date: 9/20/01

H-D 0557  
Confidential

District Number:		01	2002 Bar and Shield Scoresheet			SMO 0582		Dealer Number:	1864
			Last Viewed or Printed 9/19/2002			H-D Bar & Shield Logo		Last Updated:	9/4/2002
Score	Max	A. Operations			Score	Max	C. Customer Service		
20	40	1 Electronic Qtrly Financial Statements			20	70	70	1 Retail Hours	
40	40	2 CPA Prepared Annual F.S.			Y	40	70	2 Service Hours	
30	30	3 5 Yr. Business Plan			Y	15	15	3 H-D Direct Mail: Motor P&A General Merchandise	
20	20	4 Computer Inventory & Order Mgmt.			Y	15	15	4 H-D Demo Program:	
40	40	5 Electronic Warranty Claim, SWR, P&A Orders 99%			Y	20	20	5 Hog Chapter	
20	20	6 Inventory Reporting & Retail Polling			Y	10	10	6 Use Co-op or MDF Advertising	
40	40	7 Access to h-dnet.com by 03/31/2002			Y	120	120	7 Radio Events	
20	20	8 Participated in Sample Program			Y			TV Events	
40	40	9 Customer Contact System			Y			Radio Events, TV	
20	20	10 Approved Fork Lift Equipment			Y			Newspaper	
40	40	11 Maintain Prompt Payment Status			Y			Direct Mail - Non H-D Catalog Pgm	
330	350	Operations Totals						Billboard (Exempt timebound req.)	
Score	Max	B. People			20	20	20	8 H-D National Open House	
		1 Meet Guidelines for Staffing Levels:			20	20	20	Dealer Open House Date:	
30	30	Vehicle Sales			40	40	40	9 Web Site Link by 03/31/2002	
30	30	P&A and General Merchandise			Y	40	40	10 Provide Financing/Ext Warranty/Ins	
30	30	Service			Y	20	20	11 Employ Digital Technician	
30	30	Management/Admin./Office			Y			Customer Service Totals	
40	40	2 Service Staff PHD Trained			Y	Score	Max	D. Facility	
40	40	3 P&A / Gen Mdse Staff PACE Trained			Y	40	40	1 Location: Acceptable:	
20	20	4 Management MBA Trained			2	40	40	2 Current 3x24 or approved Signage	
20	20	5 Attended H-D Credit F&I Seminar			2	40	40	Signage: Current Bar & Shield:	
40	40	6 Job Descriptions/ Handbook/Comp. Plan			Y	40	40	3 Approved Retail Environment	
20	20	7 Principal or G.M. Attended 2003 MY Summer Dealer Meeting			40	40	40	2/1/1998	
		Principal or G.M. Name:			40	40	40	4 Total Facility Size:	
		ROBIN KENNEDY			40	40	40	5 Showroom Size:	
20	20	8 Principal or G.M. Attended 2002 Winter Dealer Meeting Training			40	40	40	6 Service Dept:	
		Principal or G.M. Name:			20	20	20	7 Customer Parking:	
		JOHN ATWOOD			300	300	300	Facilities Totals	
20	20	9 Employee Attended 2002 WDM Expo			Score	Max	E. Performance		
		Employee Name:			30	30	1 Accepted 2002 MY SUA: Big Twin		
		CINDY DIRUSSO			30	30	Accepted 2002 MY SUA: Sportster		
20	20	10 Principal or G.M. Attended 2002 Spring Town Hall Meeting			60	60	2 Retailed 2002 MY SUA:		
		Principal or G.M. Name:			25	25	3 Inc. Net Wholesale P&A/Gen Merch:		
		JOHN ATWOOD			40	40	4 % Net Wholesale Motor Parts:		
					40	40	5 % Net Wholesale Gen Merch:		
360	360	People Totals			225	225	Performance Totals		
Bar & Shield Logo									
Net Max:	1,715	Score	Max	F. CSI					
(Sections A-E,G)		82	200	1 One Month Sales Summary:			82		
Net Score:	1,665 Net Percent Attained:	79	200	1 18 Month Service Summary			79		
(Sections A-E,G)	97.08	161	400	CSI Totals					
Gross Max:	2,135	Score	Max	G. Program Participation					
(Sections A-G)		20	20	1 Performance Consulting					
Gross Score:	1,826 Gross Percent Attained:			2 Rider's Edge					
(Sections A-G)	85.53			3 E-Commerce					
				4 Rentals					
				5 Buell Dealer					
		0	20	Participation Totals					

Dealer Signature: John Atwood Date: 9/27/02DM Signature: Richard Lang Date: 9/27/02

12/19/2003 14:58 6034249068

AL CONTOIS

PAGE 19

1

12/15/2003 17:21 6034249068

AL CONTOIS

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## 2003 Bar and Shield Scoresheet

District Number: 1  
 Dealer Number: 1864  
 Last Updated: 10/16/03

Score	Max	A. Operations
50	60	1 Electronic Qtrly Financial Statements
20	20	2 CPA Prepared Annual F.S.
30	30	3 Submit Summary Business Plan
20	20	4 Computer Inventory & Order Mgmt.
10	10	5 Maintain GDIS System Information
40	40	6 Provide terminals with h-dust.com access
20	20	7 Participate in Sample Program
30	30	8 Customer Contact Management System
30	30	9 Maintain Prompt Payment Status
10	10	10 Use E-Pay electronic payment system
230	270	Operations Totals

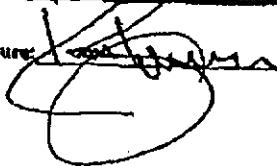
Score	Max	C. Customer Service
10	70	1 Retail Hours - 2003 MY
Y	70	2 Service Hours - 2003 MY
Y	15	3 H-D Direct Mail: Motor P&A
Y	15	General Merchandise
Y	40	4 H-D Demo Program:
Y	20	5 Hog Chapter
Y	10	6 Use Co-op or MDF Advertising
3	120	7 Radio Events
		Newspaper
		Internet
		TV
		Billboard
		Direct Mail
		Dealer Open House Date: 03/17/03
		Dealer Open House Date: 05/31/03
		Web Site Link from H-D site Y
		Offer full range of P&I Services Y
		Use E-Fund to receive less proceeds Y
		Employ Digital Technician N
		Customer Service Totals
		N

N	Score	Max	D. Facility
2	40	40	1 Location: Acceptable: 02/01/98
2	40	40	2 Approved Exterior Luggage 2
Y	40	40	3 Approved Retail Environment 07/31/03
Y	40	40	4 Total Facility Size: 329
Y	40	40	5 Showroom Size: 113
	40	40	6 Service Dept: 121
	20	20	7 Customer Parking: Y
	260	260	Facilities Totals

N	Score	Max	E. Performance
N	30	30	1 Accepted 2001 MY Big Twin Y
	30	30	Accepted 2001 MY Sportster Y
	10	10	Accepted 2001 MY V-Rod Y
Y	60	60	2 Retailed 99% of Q3/Q4/03 SUSA: 100
	2	25	3 Increase purchases of P&A and GM 2
	20	40	4 Per unit % purchases of Motor Parts 49
Y	40	40	5 Per unit % purchases of GM 103
	192	235	Performance Totals

Score	Max	F. Program Participation
20	20	1 Performance Consulting
	2	2 Rider's Edge
	3	3 E-Commerce
	4	4 Rentals
	5	5 Buell Dealer Y
20	20	Participation Totals

Score	Max	G. CSI
83	200	1 One Month Sales Summary: 83
82	200	1 18 Month Service Summary: 82
165	400	CSI Totals

Dealer Signature:  Date: 12/15/03DM Signature:  Date: 12/15/03

# EXHIBIT 39

## Deposition of Gene Ostrom, 5/25/2005

1 IN THE CIRCUIT COURT OF MILWAUKEE COUNTY  
2 STATE OF WISCONSIN

3 CYCLE-CRAFT CO., INC. d/b/a  
4 BOSTON HARLEY-DAVIDSON/BUELL,

5  
6  
7 vs. Case No. 04-11402-NMG

8 HARLEY-DAVIDSON MOTOR CO., INC.  
9 AND BUELL DISTRIBUTION CO., LLC.,

10 Defendant.

11  
12  
13 Video Deposition of GENE OSTROM

14  
15 Wednesday, May 25th, 2005

16 11:00 a.m.

17 at

18 Gramann Reporting, LTD  
19 710 N. Plankinton Ave.  
20 Milwaukee, WI

21 Reported by Rose M. Coulthart, RPR

22

23

24

25

## Deposition of Gene Ostrom, 5/25/2005

1 Q Any counsel that are present in the room today?

2 A Jennie Kent.

3 Q Any other counsel?

4 A Not that I can recall.

5 Q Do you recall seeing this document before that  
6 meeting?

7 A No, not that I can recall.

8 Q Do you recall if there was a cover memo or a cover  
9 letter attached to this document when you saw it?

10 A No, not that I can recall.

11 Q Do you recall that there was discussion at this  
12 meeting regarding what sanction, if any, to impose  
13 upon Boston Harley-Davidson?

14 MR. BERKOWITZ: You can answer that yes or  
15 no or you don't know.

16 THE WITNESS: Yes.

17 BY MR. REHNQUIST:

18 Q What do you recall of that discussion?

19 MR. BERKOWITZ: Okay. At this point I'm  
20 going to jump in and instruct you not to -- not to  
21 answer the question to the extent that your answer  
22 may reveal communications with Jennie Kent, as  
23 counsel for the company, either by members of that  
24 meeting to Ms. Kent or comments that Ms. Kent may  
25 have made to others.

Deposition of Gene Ostrom, 5/25/2005

1 If you can answer the question apart  
2 from any such communications, that's fine. You can  
3 go ahead and do so.

4 THE WITNESS: I cannot.

5 MR. BERKOWITZ: All right.

6 BY MR. REHNQUIST:

7 Q Well, let me try one just to button it up. Do you  
8 recall asking Mr. Verduyn any questions in this  
9 meeting regarding Exhibit 68?

10 MR. BERKOWITZ: You can answer that.

11 THE WITNESS: Yes.

12 BY MR. REHNQUIST:

13 Q What questions do you recall asking him?

14 A The confidence in his work when he reviewed these  
15 particular files, the dealership. |

16 Q And do you recall in any more precision the words  
17 that you used when you asked him this question?

18 A No. I can't recall.

19 Q Do I understand correctly that you asked him in words  
20 or substance what level of confidence he had in his  
21 analysis?

22 A My question was around his confidence that what was  
23 showing here was accurate from his investigation at  
24 the dealership.

25 O Do you recall if anyone else asked Mr. Verduyn

# EXHIBIT 40

Videotape

1 UNITED STATES DISTRICT COURT  
2  
3 DISTRICT OF MASSACHUSETTS  
4  
5 CYCLE-CRAFT CO., INC., d/b/a  
6 BOSTON HARLEY-DAVIDSON/BUELL,  
7 Plaintiff,  
8 vs. Civil Action No. 04 11402 NMG  
9 HARLEY-DAVIDSON MOTOR COMPANY, INC.  
10 and BUELL DISTRIBUTION COMPANY, LLC,  
11  
12 Defendants.  
13  
14  
15 Video Deposition of MICHAEL G. MALICKI  
16 Thursday, April 7th, 2005  
17  
18 10:48 a.m.  
19 at  
20  
21 GRAMANN REPORTING, LTD.  
22 710 North Plankinton Avenue, Suite 710  
23 Milwaukee, Wisconsin  
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Videotape  
Deposition of Michael G. Malicki, 4/7/2005

1 which is not to disclose any communication with Jenny  
2 Kent or any communication by Ms. Kent or any  
3 communication with her relating in any way to any  
4 request for legal advice. Apart from that  
5 instruction, you can testify in response to  
6 Mr. Rehnquist's questions. Do you understand?

7 THE WITNESS: I understand, and  
8 Mr. Rehnquist, could you please repeat the question.

9 BY MR. REHNQUIST:

10 Q Yeah. Was there discussion at this meeting about  
11 what sanction to impose upon Boston Harley-Davidson?

12 A Yes.

13 Q And did counsel participate in that discussion to the  
14 best of your memory?

15 MR. BERKOWITZ: You can answer that yes or  
16 no.

17 THE WITNESS: Yes.

18 MR. REHNQUIST: Mr. Berkowitz, if I ask any  
19 further questions about the content of that  
20 discussion, are you going to instruct the witness not  
21 to answer?

22 MR. BERKOWITZ: I will.

23 BY MR. REHNQUIST:

24 Q Mr. Malicki, this is Exhibit 24. I'll show you 25 at  
25 the same time. Exhibit 24 and 25 are two letters